

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LINDA C. WILSON,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 13-cv-3166-W(BLM)

ORDER:

(1) DENYING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS [DOC. 2]; AND

**(2) DISMISSING COMPLAINT
WITHOUT PREJUDICE**

On December 26, 2013, Plaintiff Linda C. Wilson commenced this action against Defendant Carolyn W. Colvin, Acting Commissioner of Social Security, seeking judicial review of a decision denying disability benefits. On the same day, she filed a motion seeking leave to proceed *in forma pauperis* ("IFP"). (Doc. 2.) For the reasons outlined below, the Court **DENIES** Plaintiff's IFP motion.

The determination of indigency falls within the district court's discretion. Cal. Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), rev'd on other grounds, 506 U.S. 194 (1993) (holding that "Section 1915 typically requires the reviewing court

1 to exercise its sound discretion in determining whether the affiant has satisfied the
 2 statute's requirement of indigency"). It is well-settled that a party need not be
 3 completely destitute to proceed *in forma pauperis*. Adkins v. E.I. DuPont de Nemours
 4 & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C. §
 5 1915(a), "an affidavit [of poverty] is sufficient which states that one cannot because of
 6 his poverty pay or give security for costs . . . and still be able to provide himself and
 7 dependents with the necessities of life." Id. at 339. At the same time, however, "the
 8 same even-handed care must be employed to assure that federal funds are not
 9 squandered to underwrite, at public expense, . . . the remonstrances of a suitor who is
 10 financially able, in whole or in material part, to pull his own oar." Temple v.
 11 Ellerthorpe, 586 F. Supp. 848, 850 (D.R.I. 1984).

12 District courts, therefore, tend to reject IFP applications where the applicant can
 13 pay the filing fee with acceptable sacrifice to other expenses. See e.g., Stehouwer v.
 14 Hennessey, 841 F. Supp. 316, 321 (N.D. Cal. 1994), vacated in part on other grounds,
 15 Olivares v. Marshall, 59 F.3d 109 (9th Cir. 1995) (finding that a district court did not
 16 abuse its discretion in requiring a partial fee payment from a prisoner who had a \$14.61
 17 monthly salary and who received \$110 per month from family). Moreover, "*in forma*
 18 *pauperis* status may be acquired and lost during the course of litigation." Wilson v. Dir.
 19 of Div. of Adult Insts., No. CIV S-06-0791, 2009 WL 311150, at *2 (E.D. Cal. Feb. 9,
 20 2009) (citing Stehouwer, 841 F. Supp. at 321); see also Allen v. Kelly, 1995 WL
 21 396860, at *2 (N.D. Cal. June 29, 1995) (holding that a plaintiff who was initially
 22 permitted to proceed *in forma pauperis* should be required to pay his \$120 filing fee out
 23 of a \$900 settlement). Furthermore, the facts as to the affiant's poverty must be stated
 24 "with some particularity, definiteness, and certainty." United States v. McQuade, 647
 25 F.2d 938, 940 (9th Cir. 1981).

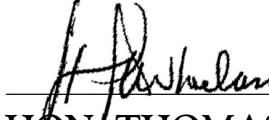
26 Having read and considered Plaintiff's application, the Court finds that Plaintiff's
 27 application fails to meet the requirements in 28 U.S.C. § 1915 for IFP status. Plaintiff
 28 is currently unemployed, but receives cash aid from the county approximately in the

1 amount of \$44. (IFP Mot. at ¶ 1–3 [Doc. 2].) She also lists her husband's income from
 2 a temporary position at Walmart amounting to \$1,200. (*Id.* ¶ 3.) Plaintiff either does
 3 not have a checking or savings account, or has no money in either. (*See id.* ¶ 4.) But
 4 she does own an automobile, though she fails to approximate its value. (*Id.* ¶ 5.)
 5 Plaintiff lists 3 dependents under the age of 18, \$800 per month in expenses, and "a lot
 6 of medical bills" as a debt or financial obligation. (*Id.* ¶¶ 6–8.) Based on the details
 7 given by Plaintiff, she has a net-positive monthly source of money. However, the Court
 8 emphasizes that this conclusion is based on the few details that Plaintiff provides in her
 9 IFP application. It does not contemplate the value of the automobile and the medical
 10 bills because Plaintiff did not provide specific values for either. Therefore, without
 11 more detailed information, the Court cannot conclude that paying the court filing fees
 12 would impair Plaintiff's ability to obtain the necessities of life. *See Adkins*, 335 U.S. at
 13 339.

14 In light of the foregoing, the Court **DENIES** Plaintiff's application to proceed *in*
 15 *forma pauperis* (Doc. 2), and **DISMISSES WITHOUT PREJUDICE** the complaint.
 16 Pursuant to this order, Plaintiff is granted 30 days' leave to pay the filing fee required
 17 to maintain this action pursuant to 28 U.S.C. § 1914, or to submit additional
 18 documentation regarding her financial status. **IF PLAINTIFF CHOOSES TO FILE**
 19 **ADDITIONAL INFORMATION REGARDING HER POVERTY, SHE MUST**
 20 **ATTACH A COPY OF THIS ORDER.** Additionally, Plaintiff is reminded that an
 21 IFP application is made under penalty of perjury, and any false statements may result
 22 in dismissal of her claims, imprisonment of not more than five years, or a fine. *See* 18
 23 U.S.C. §§ 1621, 3571.

24 **IT IS SO ORDERED.**

25
 26 DATE: December 30, 2013


 27 HON. THOMAS J. WHELAN
 28 United States District Court
 Southern District of California